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Ms. Rebecca E. Kane
U.S. Environmental Protection Agency
Ariel Rios Building (MC: 2222A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Comments of MidAmerican Energy Holdings Company Regarding EPA's
Enforcement Compliance History Online ("ECHO")

Dear Ms. Kane:

MidAmerican Energy Holdings Company ("MEHC") is a global energy services provider serving almost 5 million customers worldwide. MEHC's U.S. business platforms subject to EPA regulation include MidAmerican Energy Company, an Iowa-based utility providing regulated electric and natural gas service; CalEnergy, an independent power producer with facilities in California, New York, Arizona, Texas and Illinois; Kern River Gas Transmission Company, providing natural gas transportation from Wyoming to Southern California; and Northern Natural Gas, an interstate natural gas transmission pipeline that spans from Texas to the Upper Midwest. All these MEHC business platforms have facility specific entries in EPA's ECHO database and have the potential to be substantially and directly impacted by any information provided through the ECHO initiative.

MEHC supports the comments submitted in the matter by the Edison Electric Institute and adopts those comments as if fully stated herein. Additionally, MEHC provides the following company-specific comments on the ECHO initiative.

Data Accuracy

MEHC supports the concept of maintaining accurate facility compliance information, regardless of the method by which the information is made available. In fact, maintaining accurate information regarding a facility's compliance status is critical.

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The compliance status of facilities, as well as the date of the facilities' last inspection date, changes daily.

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In review of the facility information provided for MEHC facilities, numerous errors were noted regarding compliance status and basic information. While those data errors will be reported separately through the prescribed error correction process, one company's error information is attached hereto as an example of the significance of the errors detected and the time associated with analyzing the confusing information provided in the database and responding to the incorrect data.

One of the more disconcerting aspects of the database lies in the aspect of what constitutes a violation. Notably, facilities may receive a Notice of Violation regarding an issue detected during a facility inspection. However, the mere issuance of a Notice of Violation does not conclusively establish that the facility is not in compliance. In the regulatory framework, a facility has the ability to respond to a Notice of Violation, challenge the Notice of Violation, and pursue administrative remedies to meet its burden of establishing that the facility is in compliance. These rights and remedies are not, however, recognized in the ECHO initiative—rather, once a facility has been issued a Notice of Violation, there appears to be no mechanism to prevent the Notice of Violation from being reported as a noncompliant situation nor is there a clear mechanism to close the loop if a Notice of Violation is resolved favorably for the facility.

The ECHO Data Dictionary provides the following:

Definition of "Violation" - Noncompliance with one or more legally enforceable obligations by a regulated entity, as determined by a responsible authority. Included in this category are violations of legally enforceable obligations under pre-existing Final Orders (e.g., violations of compliance schedules included in enforcement orders).

While the caveat "as determined by a responsible authority" is stated as a condition of the data, it may not be clear to the viewers of the data what that phrase means. Many individuals believe that if a regulatory body makes a determination of noncompliance, the basis for that determination must be justified. To use an analogy, this frame of reference is akin to a criminal law setting where a person must have violated a law because (s)he was detained by the police. In the case of several of MEHC's facilities, Notices of Violation issued several years ago that have not yet been resolved due to differences in regulatory/legal interpretation and a lack of movement in resolution continue to reflect negatively on the facilities' compliance status—an unfair and inaccurate label. The violations are listed as ongoing, each and every quarter reflected in the database.

Reliance by EPA on other sources of data (i.e., state and local environmental agencies and other data bases) to establish the ECHO information is necessary, but inherently problematic and ensures that once an error is made it will be perpetuated. Labeling a facility as noncompliant is a serious matter—one that should not be looked upon casually. MEHC takes its environmental responsibilities seriously. Without adequate assurance that errors in the database will not occur and, if they do occur, such errors will be corrected promptly and without significant expenditure of resources, MEHC does not support the publication of facility-specific information that has the potential to irreparably damage a facility's reputation and good will in the community in which it is located and in the global environmental community as a whole.

Purpose and Utility of Information in the Database

While EPA's stated commitment to public access to environmental information is commendable, the Notice of Availability published in the Federal Register on November 20, 2002 acknowledges that the information within ECHO was previously available through Freedom of Information Act requests. While the World Wide Web provides the opportunity to provide access to information without the administrative burden of filing a public records or freedom of information request and obtain that information in a much more rapid fashion any time of the day or night, the assimilation and consolidation of information into a format that previously did not exist is untenable if the process to create the new information results in an unwarranted and unjustified burden on a facility with the very real prospect of irreparable harm caused solely by inaccurate and unsubstantiated information. The maintenance associated with ensuring that the compliance status of 800,000 facilities (as listed in the ECHO site as of November 20, 2002) is reflected appropriately is a monumental (and, perhaps, impossible) task. Unless the site is updated daily, the public will not have access to current, accurate information.

EPA states that the ECHO reports "provide a snapshot of a facility's environmental record" and provides demographic information from the National Census. It is unclear why EPA believes that providing demographic information in connection with a facility's compliance status is an important aspect of providing the public information. What legitimate purpose would be served by providing the public of the corresponding area's demographic information?

As stated previously herein, MEHC has significant concerns regarding the utilization of inaccurate information by the public. MEHC platforms have, in the past, been subject to inaccurate media reports based on information that was previously interpreted by other organizations to foster their specific agendas. EPA's implicit endorsement of inaccurate information by making such information fully available to the public carries

with it an aspect of formality and credibility that makes it even more critical that the information be accurate. The announcement of the release of the information to the public at large on November 20, 2002, even though cast as preliminary, created a situation where the regulated facilities were in a defensive mode, having to bear the burden of correcting the inaccurate information. If the regulated facilities will, likewise, have no opportunity to quality check in advance information posted to the site in the future, this burden will be ongoing.

The burden of checking data accuracy is a significant burden placed on the regulated entities. These facilities already spend significant amounts of time and devote significant staff resources to ensuring that data is collected and reported properly. The continuation of the ECHO initiative will require that the facilities perform a quarterly check of the information posted to the site to ensure that the data they reported correctly at the outset has, in fact, been interpreted correctly by the reviewing agency and its compliance status reflected accurately. EPA has not yet provided an analysis of the burden upon regulated and small entities regarding this additional burden.

In light of the burdens associated with maintenance of the ECHO site, the accuracy assurance that will need to be conducted, and other impacts of publishing compliance and related data, one must question the need to provide the information reflected in the ECHO site. On balance, the question should be whether the benefits of providing information already available to the public in a different format outweigh the risks of irreparable harm caused by providing the information in that format.

Security Issues

Since September 11, 2001, publication of sensitive data has been assessed and protected accordingly. The nation's security status remains heightened. Publication of precise locations of facilities by latitude and longitude may well serve to enhance public awareness—unfortunately, this awareness may land in the hands of those who may not have pure motives for using the information. Location, combined with demographics and facility infrastructure characteristics, raise issues of homeland security that cannot be overlooked in the purpose and utility of the information.

MEHC urges EPA to consider whether the publication of all or any of this information through the new e-government initiative, making it “much easier for the public to obtain these data records on the Internet” advances the public interest.

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MEHC appreciates the opportunity to provide its input on ECHO and urges EPA to weigh the benefits and burdens of providing accurate facility compliance information in this format. Please do not hesitate to contact me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, reading "Cathy S. Woollums". The signature is written in a cursive, flowing style.

Cathy S. Woollums
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